

EXHIBIT 39

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The Lineman Got \$63 an Hour. The Utility Was Billed \$319 an Hour.

By **Frances Robles**

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SAN JUAN — The small energy outfit from Montana that won a \$300 million contract to help rebuild Puerto Rico’s tattered power grid had few employees of its own, so it did what the Puerto Rican authorities could have done: It turned to Florida for workers.

For their trouble, the six electrical workers from Kissimmee are earning \$42 an hour, plus overtime. The senior power linemen from Lakeland are earning \$63 an hour working in Puerto Rico, the Florida utility said. Their 40 co-workers from Jacksonville, also linemen, are making up to \$100 earning double time, public records show.

But the Montana company that hired the workers, Whitefish Energy Holdings, had a contract that allowed it to bill the Puerto Rican public power company, known as Prepa, \$319 an hour for linemen, a rate that industry experts said was far above the norm even for emergency work — and almost 17 times the average salary of their counterparts in Puerto Rico.

A spokesman for Whitefish, Chris Chiames, defended the costs, saying that “simply looking at the rate differential does not take into account Whitefish’s overhead costs,” which were built into the rate.

“We have to pay a premium to entice the labor to come to Puerto Rico to work,” Mr. Chiames said. Many workers are paid overtime for all the time they work. Overtime pay varies by type of worker, union membership, mainland utility company and many other factors.

The markup is among the reasons that federal officials are scrutinizing all other contracts involving Puerto Rico. The control board that oversees Puerto Rico’s finances is seeking more authority over the billions headed the island’s way, including the power to review big contracts and randomly inspect smaller ones.

Two weeks after Prepa abruptly withdrew the contract from Whitefish following strong criticism by federal and congressional officials of the company’s expected ability to perform the work needed, more questions are being raised about the deal, including how much it will actually cost. Whitefish will keep repairing power lines until Nov. 30.

As the Trump administration prepares to spend billions of dollars on rebuilding Puerto Rico's infrastructure, the Whitefish deal — hatched in a dim, powerless room six days after a storm packing winds of nearly 150 miles an hour knocked down thousands of power poles and lines — has served as a cautionary note about the potential for soaring costs that are common after disasters.



Puerto Rico has struggled to repair damaged power lines since the hurricane in late September.
Erika P. Rodriguez for The New York Times

Questions are already being raised about a second contract that Prepa signed, this one with an Oklahoma company, Cobra, which was the highest bidder, required a \$15 million down payment and — like the doomed Whitefish agreement — included a clause that said the deal could not be audited.

At issue is managing what can be conflicting dynamics — the need to get essential work done quickly and the potential for it to be done at exorbitant prices. With roads and bridges wiped out, schools across the island damaged and health care needs expected to soar, the repair contracts are just two of many that are expected to easily cost billions of dollars.

“We don’t do so well with emergency funding in this country,” said Leslie Paige, with Citizens Against Government Waste, a watchdog group. “We often do not see the final bill for these kinds of mistakes until after the fact, and the money is already gone.”

Representative Rob Bishop, a Utah Republican who is chairman of the House Natural Resources Committee that is investigating the contract, said Whitefish served as a red flag. “Based on Whitefish, all of the contracts need to be looked at, especially from the beginning until there is a process we are comfortable with,” he said.

The situation in Puerto Rico is dire: According to the research firm Rhodium Group, this is the largest blackout in United States history. After Hurricane Maria struck Puerto Rico on Sept. 20, power was knocked out at every home and business. On Sunday, 54 days later, the grid was working at 47.8 percent of capacity.

The Whitefish case has already influenced Puerto Rico’s recovery: President Trump agreed to increase aid to the island — but only if the Puerto Rican government does a better job of estimating costs. “We have a lot of work to do when it comes to grant-monitoring at all levels of government,” Brock Long, director of the Federal Emergency Management Agency, told Congress recently, vowing not to commit “one dollar” to the Whitefish deal.

The Whitefish contract has been particularly problematic.

The Army Corps of Engineers, which is overseeing power restoration in Puerto Rico, did not hire Whitefish because its prices were more than double what the agency considered reasonable, according to the Senate Committee on Homeland Security and Governmental Affairs.

“They are paying \$3 million for hotels and \$80 a day each for food,” said Johnny Rodríguez Ortiz, president of the organization of retired electrical workers in Puerto Rico. “I just had lunch with my wife, and it cost me \$14.”

Prepa agreed to pay Whitefish three times the going rate for aviation fuel, and about double what a helicopter specially equipped for transmission line construction should cost, according to industry insiders and people with knowledge of the Whitefish contract. The company is also billing about \$4,000 an hour to rent a helicopter; companies that specialize in transmission line construction said that price is more than double what they charge.



A Whitefish worker at a helicopter landing site in Manatí, P.R. Industry insiders say the Puerto Rico power authority is paying Whitefish three times the going rate for aviation fuel. Erika P. Rodriguez for The New York Times

At least four congressional committees are investigating. The Office of Inspector General for the Department of Homeland Security has also begun a review of the Whitefish contract, as has the F.B.I., according to media reports.

Whitefish's chief executive, Andy Techmanski, has called the investigations a "witch hunt." The company said on Saturday that it had completed repair of more than 150 miles of transmission and distribution power lines.

To explain the differences in salaries paid to the workers and the rates Prepa was charged, Mr. Chiames, said in an email, "The rates in the contract were fairly negotiated between Prepa and the company and were based on the mutual knowledge about the difficulty of the work and associated risks."

He said the company was making a "single digit" profit on the Florida workers because costs in Puerto Rico were higher.

Still the costs came as a surprise to the public utilities in Florida that had sent workers.

“We know what we are invoicing is our straight costs,” said Chris M. Gent, vice president for communications at the Kissimmee Utility Authority.

Normally, when utilities help each other recover from disaster under mutual aid agreements, “nobody is marking anything up,” Mr. Gent said.

“Linemen cost \$60, \$70, maybe \$100 an hour,” said Luis A. Aviles, a former chairman at the Puerto Rico Electric Power Authority under the previous administration, and an energy law professor at the University of Puerto Rico. “Let’s say you put an overage on it, because it’s a special emergency circumstance. But \$300 an hour? No way.”

Jacksonville Electric Authority said it had billed Whitefish for additional overhead to cover things like administrative costs and insurance, bringing the bill to about half what Whitefish was charging Prepa. A spokeswoman for Jacksonville Electric said she was not concerned about the markup because Whitefish was also handling food and lodging. (However, Whitefish is also charging Prepa another \$412 a day per worker for food and lodging.)

Lakeland said it was charging Whitefish only for labor and was unaware of how much the Puerto Rican government was paying. Most of Whitefish’s subcontractors are from private companies, and officials with knowledge of the contract said that those workers were receiving more than the Florida linemen, but that there was still a significant gap between what the companies were billing Whitefish and what Whitefish was billing Prepa.



Whitefish workers arriving at a helicopter landing site in Manatí, P.R. Erika P. Rodriguez for The New York Times

Jeffrey Bartel, a former senior executive at Florida Power & Light, the third-largest utility in the United States, said markups were routine in subcontracted work, as was charging double time for emergency work.

But “even at double time, the labor cost figures are empirically questionable,” Mr. Bartel said after reviewing the contract at the request of The New York Times. “Possibly most egregious is that this all takes place with a dire and desperate circumstance where people’s lives are at immediate danger without power, and, therefore, there is unequal bargaining position by Puerto Rico, which allows for the possibility of price gouging.”

In Puerto Rico, the reaction was more harsh and skeptical. Mr. Rodríguez, the former utility worker, says out loud what many critics say privately: that markups like those have been used in the past to pay kickbacks to corrupt officials.

Prepa has long dodged accusations that it created a slush fund by buying low-grade sludge and billing customers for high-grade oil.

Prepa would not answer specific questions or provide invoices because the matter is under investigation and the record no longer public. The company's chief executive, Ricardo L. Ramos, said he had agreed to the contract because Whitefish did not demand money upfront, and decided to cancel it only because of the negative publicity.

"If people have the perception that there was an act of corruption where some benefited and became millionaires at the expense of the people of Puerto Rico, while they're all going through a humanitarian crisis, look, that's a huge offense," he said at a news conference.

He acknowledged that Prepa could have contracted the Florida companies directly, but that it would then have had to feed and house the outside workers, which he said was more than the company could manage. He recently fired the company's lawyer and procurement officer, and Prepa is now entering into its own mutual aid agreements with New York and Florida utilities.

Mr. Ramos and the Whitefish chief, Mr. Techmanski, deny any improprieties. Mr. Techmanski said he was the only one to rush to Puerto Rico under precarious conditions to get the lights back on. He told NBC News that he made contact with Prepa through LinkedIn in early September just before Hurricane Irma, an assertion Mr. Bartel said was so absurd that, if true, raised even more concerns about the due diligence that went into awarding the contract.

At a recent news conference, Mr. Ramos explained that Whitefish's prices for subcontractors were high because initially it had to cover things like food and lodging. His explanation was unclear, though, because the contract has separate line items for such expenses.

He said that some of the more contentious clauses, like the one that suggested FEMA had reviewed and approved the deal, were included by accident, in what he described as "an oops."

Deborah Acosta contributed reporting from New York.

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